

AMENDMENTS TO THE DRAWINGS:

The attached sheet of drawing includes a new Figure 2 showing a flow chart of the steps performed in an embodiment of the invention. The new figure is believed not to introduce new matter.

Attachment: New Figure 2

REMARKS

Initially, Applicants would like to thank Examiner Malamud for granting an interview and for her time spent in the interview. Applicants would also like to thank Primary Examiner Layno for attending the interview and for his input during the interview.

The application has been amended as discussed at the interview to place the application in condition for allowance at the time of the next Official Action.

A new drawing figure is added showing a flow chart of the steps performed in an embodiment of the invention. The new figure is believed not to introduce new matter.

The specification is amended to make reference to the new drawing Figure.

A substitute abstract is provided on an accompanying separate sheet.

Claims 1-13 were previously pending in the application. Claims 8-13 are cancelled. Therefore, claims 1-7 remain for consideration.

Claims 1, 2, 5, 8, 9, and 12 were rejected as anticipated by RENIRIE et al. 6,141,590. That rejection is respectfully traversed.

Claim 1 is amended as discussed at the interview to clarify that the vagal nerve stimulation (VNS) signal affects the

brain. Support for the amendment may be found in paragraphs [0020]-[0025] bridging pages 6 and 7 of the specification.

As pointed out at the interview, the RENIRIE reference is directed to cardiac pacing, wherein the stimulation provides cardiac rate modulation. See for example, column 3, line 48 to column 4, line 10.

RENIRIE is silent as to stimulation that affects the brain.

As discussed at the interview, since RENIRIE does not disclose regulating a VNS intensity in response to at least one parameter in order to affect the brain as recited in claim 1, the anticipation rejection is not viable. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1, 3, 8 and 10 were rejected as being anticipated by OBEL et al. 5,199,428. That rejection is respectfully traversed.

Claim 1 is amended as discussed at the interview to clarify that the vagal nerve stimulation (VNS) signal affects the brain.

As set forth at the interview, OBEL teaches ameliorating myocardial ischemia through vagal nervous stimulation (VNS) to control the heart. OBEL does not disclose using vagal nerve stimulation to affect the brain.

As the method disclosed by OBEL is directed to VNS applications which are for the heart, OBEL does not anticipate the recited method of claim 1.

Claims 4, 6, 7, 11 and 13 were rejected as unpatentable over RENIRIE. That rejection is respectfully traversed.

Claims 4 and 6 depend from claim 1 and are believed patentable over RENIRIE at least for depending from an allowable independent claim.

Claim 7 recites monitoring the level of end-tidal carbon dioxide (EtCO₂) and respiration frequency which correlate to the VNS intensity.

The position set forth in the Official Action is that the EtCO₂ is an obvious design choice that does not does not have a stated advantage.

However, this position is untenable for at least the following reasons.

First, as pointed out at the interview, RENIRIE is directed to cardiac pacing based on the inspiration and expiration phases of a patient. RENIRIE does not provide a correlation between any parameter and VNS intensity. Thus, it would not have been obvious to modify RENIRIE to include the recited parameter.

Second, as discussed at the interview, since incorporation of "end-tidal carbon dioxide measurement" would be sufficient to overcome the art of record and since claim 7

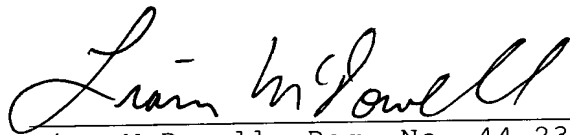
already includes this limitation, claim 7 is believed to define over the art of record.

In view of the present amendment and the foregoing remarks, it is believed that the present application has been placed in condition for allowance. Reconsideration and allowance are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

A handwritten signature in cursive script, reading "Liam McDowell", is written over a horizontal line.

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